IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 8 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DECCAN CANS & PRINTERS PVT.LTD

Versus

ABC (PLANT PROTECTION) LTD.

Appearance:

1. COMPANY PETITION No. 8 of 1998

MR AC GANDHI for Petitioner No. 1

MR SA DESAI for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/11/2002

ORAL JUDGEMENT

1. The petitioner has filed this company petition for winding up of the respondent company for its failure to pay to the petitioner a total sum of Rs.2,90,876/being balance amount outstanding alongwith liquidated damages for non payment thereof.

2. The petitioner has stated in the petition that as per order dated 13th May, 1996 placed by the respondent company with the petitioner for supply of 3000 Nos. of 5 liters and 3000 nos. of 4 liters tins at the rate of Rs.38.75 paise and Rs.31.75 paise respectively, the petitioner has supplied to the respondent - company printed round tin containers with loose tops vide their invoices nos.122 dated 20/6/1996 for Rs.77,921/-; no.125 dated 21/6/1996 for Rs.78,425/- and no.150 dated 07/07/1996 for Rs.1,34,540/- aggregating Rs.2,90,876/-. As per the agreement, the payment for the said invoices was to be made within sixty days from the date of respective despatch. Against the dues of the petitioner, the respondent - company had issued cheque no.144055 of Bank of Baroda for Rs.2,11,500/- in September, 1996. However, the said cheque was dishonoured. The petitioner thereafter demanded payment of outstanding amount from time to time. The respondent - company has assured the petitioner vide its fax message dated 12/10/1996 to repay dues without further delay. Thereafter, the respondent company by its letters dated 31/12/1996 and 05/06/1997 had raised certain disputes regarding quality of the containers. According to the petitioner, the said disputes were false, frivolous and not bonafide. The petitioner therefore, sent statutory notice through its advocate on 11th July, 1997 which was duly received by the respondent - company. The said notice was replied by the respondent - company by its advocate's letter dated 29th September, 1997 raising the same disputes which were not genuine and bonafide disputes according to the petitioner.

3. Since after service of the statutory notice, payment was not made by the respondent - company to the petitioner. The petitioner was, therefore, compelled to file present winding up petition against the respondent company. This Court has issued notice dated 6/5/1998 making it returnable on 24/6/1998. The respondent company appears through its advocate and the petition was admitted on 15/3/2001. However, advertisement was differed till 16/4/2001. Time was extended thereafter on different occasions and ultimately, pursuant to the order passed by this Court on 20/9/2001 advertisement of admission of the petition was published in "Indian Express" Ahmedabad edition in English dated 04/10/2001 and in "Jansatta", Ahmedabad edition in Gujarati dated 04/10/2001. The petitioner has filed affidavit of service alongwith which copies of these advertisements were also filed.

4. Heard Mr.A.C. Gandhi learned advocate for appearing for the petitioner and Mr.S.A. Desai learned advocate appearing for the respondent - company. As far as the petitioner's dues are concerned the same were strongly disputed by the respondent - company. However, the petitioner has further brought to the notice of this Court that the petitioner has taken search from the record of the Registrar of the Companies at Ahmedabad, regarding the respondent - company and it was found that the respondent - company has not filed balance sheet after 31st March, 1995. The petitioner has placed the financial data of the respondent - company on the basis of the last available balance-sheet as on 31st March, 1995. As per the said balance sheet there was accumulated loss of Rs.2,95,793/-. The respondent Company has also borrowed secured loans from Bank of Baroda, GSFC, GLFL etc. to the tune of Rs.49,67,366/-. Thus, the financial position of the respondent - company is very weak and is commercially insolvent. The respondent - company has failed and neglected to pay the outstanding amount or any part thereof to the petitioner. The respondent - company's affidavit-in-reply filed on 27th July, 1998 had not disputed the fact stated by the petitioner in the petition in so far as financial data of the respondent - company is concerned. On the contrary, in its further affidavit-in-reply filed on 26th April, 2001, it was stated that the respondent - company had availed certain facilities from Bank of Baroda. The Bank of Baroda has instituted proceeding before the Debts Recovery Tribunal, Ahmedabad being Original Application no.218 of 1998. It was further stated in the said affidavit that the Gujarat State Financial Corporation has taken over the unit under Section 29 of the State Financial Corporations Act. The Bank of Baroda has also got its charge over the properties of the company. On the basis of these facts and averments made in the affidavit this Court believes that the business activities of the respondent - company have come to grinding hold and the possession of the business premises of the respondent company is already taken by GSFC. In such a situation it is difficult to carry on the business. Mr.S.A. Desai learned advocate appearing for the respondent - company has also fairly conceded that the respondent - company is virtually closed. If this is the state of affairs of the respondent - company than even if some disputes are there with regard to the quality of the goods supplied by the petitioner to the respondent company, it cannot be said that it is not the case where winding up order should not be passed by this Court. Winding up order is not passed merely on failure of the respondent - company to discharge its liabilities

towards the petitioner. But certain other factors which are equally relevant for the purpose of deciding this petition were also taken into consideration and after considering the overall situation of the matter, this Court is of the view that formal order of winding up is required to be passed in this petition. Hence, the Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as Official Liquidator of respondent - company and he is directed to take over the possession of the entire assets of the respondent company.

5. With this direction, this company petition is allowed.

[K.A. PUJ, J.]

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